

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 * * *

11 UNITED STATES OF AMERICA,)

Case No.: 2:10-cv-00565-RLH-PAL

12 Plaintiff,)

ORDER

13 vs.)

(Motion in Limine #90)

14 NICHOLAS BICKLE,)

15 Defendant.)
16 _____

17 Before the Court is the United States of America's ("Government") **Motion in**
18 **Limine** (#90, filed Mar. 2, 2011). The Court has also considered Nicholas Bickle's Opposition
19 (#97, filed Mar. 18, 2011), and the Government's Reply (#107, filed Mar. 28, 2011).

20 **BACKGROUND**

21 Bickle is charged with one count of conspiracy and thirteen counts related to
22 trafficking in firearms and explosives. The Government makes the following allegations in
23 support of its case. In June 2010, the Bureau of Alcohol, Tobacco, Firearms and Explosives
24 ("ATF") learned from a confidential informant that a man named Omar Aguirre illegally sold and
25 possessed firearms. The ATF subsequently used the confidential informant to purchase firearms

26 ///

1 from Aguirre. The confidential informant purchased four firearms and later obtained magazines
2 for the firearms. The confidential informant had no involvement in this case after this purchase.

3 The ATF continued to investigate Aguirre and engaged in multiple undercover
4 transactions with him. In August 2010, the ATF interviewed Aguirre about his activities and he
5 identified Richard Paul, Andrew Kaufman, and Bickle as other individuals involved in the
6 trafficking of firearms and explosives. The ATF began investigating all three individuals and
7 eventually all three were arrested. At some point after Paul was arrested, he agreed to make a
8 phone call to Bickle in which they discussed selling firearms and explosives. Bickle was then
9 arrested and charged as set forth above. The Government's case against Bickle has proceeded to
10 trial and the Government has now filed a motion in limine. For the reasons discussed below, the
11 Court denies the Government's motion.

12 DISCUSSION

13 I. Legal Standard

14 Motions in limine are authorized "pursuant to the district court's inherent authority
15 to manage the course of trials." *Luce v. United States*, 469, U.S. 38, 41 n.4 (1984). The Court has
16 authority to issue a preliminary ruling on the admissibility of evidence, and the decision to do so is
17 vested in the sound discretion of the Court. *United States v. Kennedy*, 714 F.2d 968, 975 (9th Cir.
18 1983).

19 II. Government's Motion in Limine

20 The Government asks the Court to enter an order in limine precluding Bickle from
21 asserting an entrapment defense, and from referencing military-related character traits, including
22 specific instances of good character in his military service. The Court will deal with each of these
23 issues in turn.

24 a. Entrapment Defense

25 If a defendant asserts an entrapment defense the government must prove, beyond a
26 reasonable doubt, that the defendant was either predisposed to commit the crime before being

1 contacted by the government or was not induced by government agents to commit the crime. *U.S.*
2 *v. McClelland*, 72 F.3d 717, 722 (9th Cir. 1995).

3 The Government asks the Court to preclude Bickle from asserting an entrapment
4 defense. In support of this request the Government argues that under the facts *they have alleged*
5 there is no basis for such a defense. The Government is essentially asking this Court to take their
6 word for it that the evidence at trial will show there is no entrapment defense and to rule
7 accordingly. Until the evidence is presented at trial, however, the Court finds that such a ruling
8 would be premature.

9 The Government also argues that an entrapment defense is not viable because
10 Bickle “concedes that he had no contact with any confidential informant or undercover officer.”
11 (Dkt. #107, Reply). However, Bickle’s “concession” was not so extensive. Bickle merely denies
12 ever having contact with Omar Aguirre, (Dkt. #97, Opposition), not “any” confidential informant
13 or undercover officer. Therefore, Bickle’s purported concession is insufficient to preclude an
14 entrapment defense.

15 In sum, the Court cannot say for sure at this time that Bickle’s alleged contacts (or
16 lack thereof) permit or preclude an entrapment defense. The Court therefore denies the
17 Government’s motion. However, by denying this motion, the Court in no way indicates that an
18 entrapment instruction will be forthcoming. The Court reserves the right to make that
19 determination at trial.

20 **b. Military-Related Character Traits**

21 Rule 404(a) of the Federal Rules of Evidence allows an accused in a criminal case
22 to offer evidence of his or her pertinent character traits. The Government asks the Court to
23 preclude Bickle from referencing any military-related character traits. The Government essentially
24 argues that any character trait Bickle may have displayed during his military service is *per se* not
25 pertinent to this case. The Court disagrees. The fact that an accused was in the military does not
26 diminish the relevance of pertinent character traits, nor would evidence of such traits confuse the

1 jury. Bickle cannot change the fact that he spent part of his life in the military and he should not
2 be precluded from offering evidence of *pertinent* character traits just because they were displayed
3 during that period of his life. However, the Court, of course, reserves the right to exclude such
4 evidence if the Court finds that it is not pertinent. Therefore, the Court defers ruling on evidence
5 of Bickle's military-related character traits for trial.

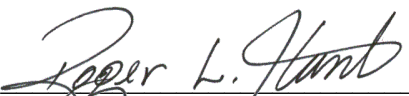
6 **c. Specific Instances of Good Character**

7 Rule 405(b) of the Federal Rules of Evidence allows evidence of specific instances
8 of a person's conduct to be admitted into evidence "[i]n cases in which character or a trait of
9 character of a person is an essential element of a charge, claim, or defense" The Government
10 argues that a specific instance of Bickle's conduct would not satisfy an element of any charge or
11 potential defenses in this case. However, the Court cannot draw that conclusion until it knows
12 what specific instances of conduct Bickle attempts to introduce and which defenses it intends to
13 rely on. When the Court knows of the nature and circumstances of Bickle's conduct, and what his
14 conduct entailed, it will then be able to compare that conduct to Bickle's defenses and make a
15 determination as to whether that conduct satisfies an element of a defense. At this point, however,
16 the motion is denied as premature.

17 **CONCLUSION**

18 Accordingly, and for good cause appearing,
19 IT IS HEREBY ORDERED that the Government's Motion in Limine (#90) is
20 DENIED.

21 Dated: August 25, 2011

22 
23 **ROGER L. HUNT**
24 **United States District Judge**